Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 8 AUGUST 14, 1974 No. 33

This issue contains

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 74-205)

Coastwise transportation—Customs Regulations amended

Section 4.93(b)(1), Customs Regulations, amended to add the Socialist Federal Republic of Yugoslavia to the list of countries whose registered vessels are permitted to transport certain articles coastwise

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

In accordance with section 27, 41 Stat. 999, as amended (46 U.S.C. 883), the Secretary of State has advised the Secretary of the Treasury under date of May 3, 1974, that the Socialist Federal Republic of Yugoslavia allows privileges reciprocal to those provided for in the cited statute with respect to certain articles transported by vessels of the United States. Therefore, corresponding privileges are accorded to vessels of Yugoslav registry effective as of the date of such notification. These privileges relate to the coastwise transportation, under the conditions specified in the applicable proviso of section 27, 41 Stat. 999, as amended (46 U.S.C. 883), of empty cargo vans, empty lift vans, and empty shipping tanks.

Accordingly, paragraph (b)(1) of section 4.93 of the Customs Regulations (19 CFR 4.93(b)(1)) is amended by the insertion of "Yugoslavia, Socialist Federal Republic of" in appropriate alphabetical order in the list of countries under that paragraph.

(Sec. 27, 41 Stat. 999, as amended; 5 U.S.C. 301, 46 U.S.C. 883)

There is statutory basis for the described extension of reciprocal privileges, and the amendment recognizes an exemption from the coastwise prohibition of section 27, 41 Stat. 999, as amended (46 U.S.C. 883). Therefore, good cause is found for dispensing with notice and

public procedure thereon as unnecessary, and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved July 19, 1974:
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register July 31, 1974 (39 FR 27648)]

(T.D. 74-206)

Ports of entry—Customs Regulations amended

Changes in the Customs Field Organization, section 1.2(c), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C., July 19, 1974.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART I—GENERAL PROVISIONS

On April 16, 1974, a notice of a proposal to extend the port limits of New Orleans, Louisiana, in the New Orleans, Louisiana, Customs district (Region V), was published in the Federal Register (39 FR 13659). No comments were received in regard to this proposal.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), the port limits of New Orleans, Louisiana, in the New Orleans, Louisiana, Customs district (Region V) are hereby extended to include the territory enclosed within the following geographical limits:

From that point where the midpoint of the Mississippi River crosses north latitude 29°49′, west along north latitude 29°49′ to west longitude 90°15′, then north along west longitude 90°15′ to Airline Highway (U.S. Highway Nos. 51, 61, and 65), then east along Airline Highway to west longitude 90°10′, then north along west longitude 90°10′ to the middle of Lake Pontchartrain, then in an eastern direction along the middle of Lake Pontchartrain to the midpoint of the Rigolets, then along the midpoint of the Rigolets to the shore of Lake Borgne, then in a southwesterly direction along the northern shoreline of Lake Borgne to the point where the Bayou Bienvenue enters Lake Borgne, then in a westerly direction along the midpoint of the Bayou Bienvenue to a point where it crosses west longitude 89°55′, then south along west longitude 89°55′ to the point where it first crosses the midpoint of the Mississippi River, then downstream in a southerly direction along the midpoint of the Mississippi River to the point where it crosses north latitude 29°49′.

To reflect this change, the table in section 1.2(c) of the Customs Regulations (19 CFR 1.2(c)) is amended by substituting "NEW ORLEANS, LA. (including territory described in T.D. 74–206)." for "NEW ORLEANS, LA. (including territory described in E.O. 5130, May 29, 1929)." in the column headed "Ports of entry" in the New Orleans, Louisiana, Customs district (Region V).

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 19 U.S.C. 1, 2)

It is desirable to make the extended port of entry available to the public as soon as possible. Therefore, good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. This amendment shall be effective upon publication in the Federal Register.

(ADM-9-03)

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register July 31, 1974 (39 FR 27648)]

(T.D. 74–207)

Reimbursable services—Excess cost of preclearance operations

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 25, 1974.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set

forth below and will be effective with the pay period beginning August 18, 1974.

Installation	*Biweekly excess cost*
Montreal, Canada	$ 7,979.00
Toronto, Canada	19,030.00
Kindley Field, Bermuda	2,837.00
Nassau, Bahama Islands	4,225.00
Vancouver, Canada	2,054.00
Winnipeg, Canada	385.00

(FIS-9-05)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register July 31, 1974 (39 FR 27743)]

(T.D. 74-208)

Country of origin marking

Marking of goods imported from the French islands of Amsterdam, St. Paul, and Kerguelen

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 24, 1974.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 134—COUNTRY OF ORIGIN MARKING

Pursuant to section 134.45(d) of the Customs Regulations (19 CFR 134.45(d)), notice is hereby given that goods which are the product of the French islands of Amsterdam, St. Paul, and Kerguelen must be marked with a legend such as "Product of Amsterdam Island (France)", for country of origin marking purposes.

Fishery products have recently been imported into the United States from these islands. Since the names Amsterdam, St. Paul, and Kerguelen, are not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin of products imported from them, the word "France" shall be required to appear

in conjunction with the name of the island or islands where the goods are produced.

Effective date. The above ruling shall be effective as to merchandise entered, or withdrawn from warehouse, for consumption on or after the ninety-first day after publication in the Federal Register.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register July 31, 1974 (39 FR 27648)]

(T.D. 74-209)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles in certain categories manufactured or produced in Nicaragua

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 25, 1974.

There is published below the directive of July 12, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles in certain categories manufactured or produced in Nicaragua.

This directive was published in the Federal Register on July 18, 1974 (39 FR 26312), by the Committee.

(QUO-2-1)

NEIL J. MARSH,
for R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

July 12, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Pursuant to the Bilateral Cotton Textile Agreement of September 5, 1972, as amended, between the Governments of the United States and Nicaragua, and in accordance with Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective as soon as possible, and for the twelve-month period beginning August 1, 1974 and extending through July 31, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 9/10 and 22/23, produced or manufactured in Nicaragua, in excess of the following twelve-month levels of restraint:

Category	*Twelve-Month Level of Restraint*
9/10	2,756,250 square yards
22/23	2,756,250 square yards

In carrying out this directive, entries of cotton textile products in Categories 9/10 and 22/23, produced or manufactured in Nicaragua and which have been exported prior to August 1, 1974, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period August 1, 1973 through July 31, 1974. In the event that the levels of restraint established for the twelve-month period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of September 5, 1972, as amended, between the Governments of the United States and Nicaragua which provide, in part, that within the aggregate limit, the limitations on Categories 9/10 and 22/23 may be exceeded by not more than five (5) percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustment pursuant to the provisions of the bilateral agreement referred to above will be made to you by further letter.

553-425—74——2

A detailed description of the categories in terms of TSUSA numbers was published in the Federal Register on January 25, 1974 (39 F.R. 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Nicaragua and with respect to imports of cotton textiles and cotton textile products from Nicaragua have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

(T.D. 74-210)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in the Hungarian People's Republic

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 25, 1974.

There is published below the directive of July 16, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles and cotton textile products in certain categories manufactured or produced in the Hungarian People's Republic.

This directive was published in the Federal Register on July 19, 1974 (39 FR 26474), by the Committee.

(QUO-2-1)

NEIL J. MARSH,
for R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

July 16, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Pursuant to the Bilateral Cotton Textile Agreement of August 13, 1970, as amended, between the Governments of the United States and the Hungarian People's Republic, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective August 1, 1974 and for the twelve-month period extending through July 31, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 24 and 39, produced or manufactured in the Hungarian People's Republic, in excess of the following levels of restraint:

Category	*Twelve-Month Level of Restraint*
24	1,337,057 square yards
39	69,284 dozen pairs

In carrying out this directive, entries of cotton textiles and cotton textile products in Categories 24 and 39 produced or manufactured in the Hungarian People's Republic and which have been exported prior to August 1, 1974, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period, August 1, 1973 through July 31, 1974. In the event that the levels of restraint for that twelve-month period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of August 13,

1970, as amended, between the Governments of the United States and the Hungarian People's Republic which provide, in part, that within the aggregate limit, the limitations on Categories 24 and 39 may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 25, 1974 (39 F.R. 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions take with respect to the Government of the Hungarian People's Republic and with respect to imports of cotton textiles and cotton textile products from the Hungarian People's Republic have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1132)

CONTROL DATA CORPORATION v. THE UNITED STATES No. 5531
(—F. 2d —)

1. REAPPRAISEMENT—MEMORY PLANES

Customs Court, Appellate Term decision reversing the decision and judgment of a single judge sitting in reappraisement insofar as it sustained the importer's claimed values. *Reversed.*

2. SECTION 501 (a)

Statutes, such as section 501(a) of the Tariff Act of 1930, which give a right of appeal are to be liberally construed.

3. SECTION 402(d)(2)—COST OF MATERIALS-PROFIT COMPUTATION

In computing a profit amount, under section 402(d)(2) of the Tariff Act of 1930, it is error to apply a profit percentage to the cost of materials used in the imported goods, when that profit percentage is first computed without considering the cost of the materials.

4. ID.

When either there are no other manufacturers of merchandise of the same general class or kind or when diligent inquiry has failed to elicit the required profit information from other manufacturers, the profits actually earned by a manufacturer may be used as the profits required by section 402 of the Tariff Act of 1930.

5. SOLICITATION OF PROFIT INFORMATION

Fact that appellant attempted to solicit profit information from American parent companies, rather than from their foreign subsidiaries, does not affect our analysis of whether or not appellant diligently sought the required profit information.

6. "DILIGENT EFFORT"

"Diligent effort" rule is also applicable to sales of services.

7. ID.

By proving that inquiries were directed to all known foreign manufacturers and that the necessary information, which they declined to provide, was within their possession, appellant satisfied the requirements of the "diligent effort" rule.

United States Court of Customs and Patent Appeals, July 25, 1974

Appeal from United States Customs Court, A.R.D. 310

[Reversed]

William D. Outman II (Baker & McKenzie) attorney of record, for appellant.
Irving Jaffee, Acting Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Bernard J. Babb* for the United States.

(Oral argument April 2, 1974 by Mr. Outman for appellant and by Mr. Babb for appellee)

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE and MILLER, *Associate Judges*.

BALDWIN, Judge.

[1] This appeal is from the decision and judgment of the Customs Court, Third Division, Appellate Term, 69 Cust. Ct. 274, A.R.D. 310, 352 F. Supp. 1392 (1972), wherein the Appellate Term unanimously reversed the decision and judgment of a single judge sitting in reappraisement insofar as it sustained the importer's claimed values, 64 Cust. Ct. 693, R.D. 11703 (1970).

The merchandise in issue consists of inner and outer memory planes which are constituent elements of high speed, digital computers. These memory planes are designed so that they may only be used in a particular manufacturer's computer. The memory planes were assembled in Hong Kong from U.S. origin component materials, supplied and consigned to the foreign assembler, Waltek, Ltd. (Waltek), a wholly-owned subsidiary of appellant. The memory planes were appraised on the basis of constructed value as defined by section 402(d) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (19 USC 1401a(d)).[1] The basic issue is where the statutory amount for profit (section 402(d)(2)) element of the appraised value is correct.

---

[1] Constructed Value.—For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

(1) The cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States, and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

The record, a detailed summary of which appears in the opinion of the trial court, consists of the testimony of six witnesses and seven exhibits, all offered on behalf of appellant. Only the testimony of James Erickson and A. J. Lavoie and a summary of Exhibits 3, 4, and 6 need be repeated for an understanding of our disposition of this appeal.

James Erickson, Legal Assistant to the Treasurer of appellant testified that he sent four letters, introduced into evidence as appellant's Collective Exhibit 3, to Ampex Corporation, Fabri-Tek, Electronic Memories and Lockheed Aircraft International requesting information as to whether each company, directly or indirectly, manufactured or assembled memory planes in Hong Kong. The letters further requested, if such manufacturing or assembling was being done, information relating to the amount or rate of profit attributable to such operations. Erickson testified with respect to the replies received from each of the above companies, which were introduced as appellant's Collective Exhibit 4. He noted that inquiries had been sent to every known company in Hong Kong that manufactured or assembled memory planes. Each of the companies acknowledged the fact that they had subsidiaries assembling memory planes in Hong Kong, but each company declined to divulge any profit information. The pertinent portions of these reply letters are as follows:

> "As a matter of business policy, however, we are not able to provide you with the rate of profit attributable to the operation in Hong Kong."
>
> "I am sorry that I am not at liberty to divulge the profit structure of our Hong Kong operation (as you can well understand), but I can assure you that the profit rate is not exorbitant and is consistent with normal markups realized in this type of industry."
>
> "We regret, however, that more specific information cannot be provided on your additional questions as this material is regarded as proprietary."
>
> "Prices paid to TDL [our subsidiary] are determined by negotiation, in advance, and cover both their cost and a reasonable level of profit (by U.S. standards)."

A. J. Lavoie, an import specialist with the U.S. Customs Service at Minneapolis, Minnesota, testified with regard to procedures and methods used in effecting appraised values for the subject merchandise. He stated that in March, 1966, he sent a request for information on Customs Form 6313 to appellant and that under date of March 22, 1966, he received a reply from appellant with the information that had been requested. The reply gave a cost breakdown of Waltek's assembly charges for each memory plane assembly, which consisted of $2.63 for direct labor; $6.57 for overhead, general and administrative expenses,

and selling expenses; and $5.47 for profit. Lavoie testified that the profit figure of $5.47 was converted into a percentage figure by adding the foreign factory's cost of direct labor and general expenses and dividing this total into the foreign factory's dollar figure for profit. Lavoie confirmed that the profit percentage, derived solely from the relation which profit bears to direct labor and overhead, was applied to those two cost items and against the cost of U.S. goods, ex-U.S. plant and against freight, brokerage and insurance to the foreign factory.

Exhibit 6 is a copy of a work sheet sent to appellant by the U.S. Customs Service which illustrates the formula used to determine the appraised value of the imported merchandise on the basis of constructed value. The pertinent portion of Exhibit 6 reads as follows:

DETERMINE PERCENT OF PROFIT PRIOR TO "WORKING" CONSTRUCTED VALUE

Direct labor	(1)	$2.63
Overhead, Genl and Admin. expenses, and selling expenses	(2)	6.57
Profit	(3)	5.47
Total remittance		$14.66

% of profit is determined by dividing the total costs (1) and (2) into the profit figure(3).

1 and 2 total	$9.20	
3	5.47	59.46% profit.

Having found percent of profit then work constructed value net cost of U.S. Goods sent abroad	$33.56	
Add frt, brokerage, ins. to fgn factory	.48	
totals		34.04
direct labor	2.63	
genl exp	6.57	9.20
profit 59.46% applied on total of 34.04 and 9.20 which is 43.24		25.71
		$68.95

Appellant contends that $5.47 is the correct amount for profit to be used in computing the constructed value; whereas appellee claims that $25.71 is the correct amount for profit.

The trial court found the above profit computation—$25.71—to be improper and stated:

> It is obvious that the assembler had no expenses for the material components and merely bore the expenses of assembly. The percentage which his profits bear to his expenses will be much larger than if he were the actual manufacturer and had to purchase the materials. For this reason it is totally unrealistic, in recreating or simulating the cost of production, to generate a percentage in this manner. This results in the anomaly of an amount for profit greater than the total actual cost of assembly and profit.
>
> Defendant, in its brief asserts that "the appraising official found an amount of profit which would have been realized had there been a cost of materials incurred by the exporter." This commendable sentiment is precisely what was *not* done here.
>
> The appraising official began without considering the cost of materials at all. He first determined a percentage of profit by dividing the total costs (direct labor, overhead, general and administrative expenses) into the profit. He then, for the first time, brought cost of materials into the consideration by applying said profit percentage to the total sum of cost of component materials, freight, direct labor and general expenses. Thus his procedure in determining the profit percentage was inconsistent with his later application of that percentage. Had the appraising official been treating the assembler as a manufacturer, as would have been the proper procedure, he would never have computed a profit percentage by ignoring cost of materials entirely. This is a fundamental error in the ascertainment of an amount for profit since the *percentage* was generated *without* regard for cost of materials and then an amount arrived at with full regard for cost of materials.

Since the memory planes were assembled from components which were the product of the United States, they were subject to item 807.00 TSUS [2] treatment wherein duty is assessed upon the full value of the imported article less the cost of the American components. For that reason, the trial court further stated:

> One of the ironies of this method of computation is that it places the present importer in a worse position when he is supply-

[2] Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting----- A duty upon the full value of the imported article, less cost or value of such products of the United States
• • •

> ing the components than if he were to purchase the entire completed article from the assembler. In effect what was done here is actually very close to the levying of duty on the cost of materials, directly contrary to the provisions of item 807.00. The procedure used [h]as the effect of expanding the value of the article by amounts directly related to the cost of materials making the later elimination of the cost of American materials a meaningless act.

The trial court then found that since only the method of computation used was incorrect, appellant could rely upon the underlying values for labor, overhead expenses, and profit which remained presumptively correct under the separability doctrine. The trial court noted that were it not for that presumption of correctness, appellant would not have met its burden of proof in showing that its amount for profit was one which is usually reflected in sales by producers of merchandise of the same general character. The court, citing *N. M. Albert Co., Inc.* v. *United States*, 59 Cust. Ct. 788, R.D. 11417 (1967), held that appellant had not shown the required diligence in ascertaining the profits of competing manufacturers, insofar as appellant's inquiries were directed to the parent companies, rather than their Hong Kong subsidiaries.

In unanimously reversing the trial court's judgment, insofar as it sustained appellant's claimed values, each judge of the Appellate Term wrote a separate opinion accompanying the court's Per Curiam opinion.

Judge Richardson opined that the court lacked jurisdiction as to some of the consolidated appeals. On the entry papers of some of the importations, the consignee is Norman G. Jensen, Inc., not appellant. Since appellant is not the consignee of the instant merchandise, and there is no evidence in the record that appellant is the agent for the consignee, Judge Richardson would have dismissed those appeals on the ground that appellant lacked standing to prosecute those appeals.

As to the other appeals, Judge Richardson agreed with the trial court that the appraiser's method of computing a statutory profit did not comply with the requirements of section 402(d). However, he disagreed with the trial judge that appellant could rely upon the separability doctrine for the element of profit, since that element was the very element in dispute between the parties. Since he found the record barren of any evidence of the profit derived from sales of merchandise of the same general character which would support the profit figure contended for by appellant, Judge Richardson opined that the appraisement must stand as being presumptively correct.

Judge Landis was satisfied that the court had jurisdiction of all the appeals particularly in view of the absence of any challenge by appellee to appellant's standing. Judge Landis further concurred in the result

reached by Judge Richardson as to the remaining importations and held that result equally applicable to the appeals which Judge Richardson would have dismissed for lack of jurisdiction.

As to the jurisdictional issue, Judge Newman noted that appellant's attorney had signed the notices of appeal and under that signature line appeared the notation "(Consignee or Agent)" and, under the provisions of section 501(a) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1953 (19 USC 1501), appeals are authorized to be filed in the name of an agent of the consignee. Since the government had not challenged in any manner appellant's standing, Judge Newman thus held there was no burden upon appellant to prove its status as an agent and, therefore, he would not dismiss any of the appeals on jurisdictional grounds.

Judge Newman further stated with respect to the merits of the appeal that:

> In my view, there is a presumption of correctness attaching both to Waltek's profit figure utilized in the Government's computation ($5.47), and the profit figure the district director derived from the latter figure by a computation ($25.71) which he included in the constructed value. Waltek's profit has the status of a "subsidiary finding" by the district director *solely as to the amount of Waltek's profit*, and thus is presumptively correct *only to that extent*. On the other hand, the amount of profit which the district director included in the constructed value ($25.71) has the status of a presumptively correct "subsidiary finding" that such amount was "equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement", as required by * * * [Section 401(d)(2)].
>
> Since there is no presumption that Waltek's profit was "equal to that usually reflected in sales of merchandise of the same general class or kind" (because it was not the profit included in the appraised value), appellee had the burden of establishing by proof the profit usually reflected in sales.

Having found that the above burden had not been met by appellant, Judge Newman joined in the reversal of that portion of the lower court's decision which sustained appellant's claimed profit amount.

In holding that appellant had not met its burden of proof, Judge Newman expressed the view that even granting that appellant had shown the required diligence in ascertaining the profits of competing companies, the "diligent effort" rule was not applicable in this case because section 401(d)(2) refers to sales of merchandise, rather than sales of *services* such as those performed by Waltek.

Opinion

Bearing in mind that [2] statutes, such as section 501(a), which give a right of appeal are to be liberally construed, *Wilmington Shipping Co.* v. *United States*, 52 CCPA 76, C.A.D. 861 (1965), we agree with the rationales of the majority of the Appellate Term, *supra*, as to the jurisdictional issue raised *sua sponte* by Judge Richardson. Accordingly, we hold that this court has, as did the Appellate Term, jurisdiction of all the instant appeals.

[3] Upon examining the profit computation method at bar, we have reached the same conclusion as that of the trial court and Judge Richardson—the method used by the appraising official to compute the constructed value was erroneous. The evidence, particularly Exhibit 6, clearly shows that the appraising official adopted an artificial and unrealistic standard for computing Waltek's profit, rather than using the standard prescribed in section 402(d)(2). The $25.71 profit amount computed is particularly demonstrated to be illogical and unrealistic when it is compared to Waltek's total costs of $9.20 for labor and overhead—a profit of approximately 279.5% of its total costs. Accordingly, we hold that the appraising official, in computing a profit percentage without considering the cost of materials, erred in then applying that profit percentage to the cost of the materials—a cost which was never incurred by Waltek.

However, appellant, in order to overcome the presumption of correctness attaching to the appraisement, must still establish that his profit amount of $5.47 is "an amount for . . . profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement. . . ." Section 402(d)(2). Appellant urges that this burden of proof has been met for two alternative reasons.

Appellant first submits that the doctrine of separability is applicable to the instant appraisement. Therefore, appellant contends that it is entitled to rely upon the presumptive correctness of the appraising official's subsidiary finding that Waltek's actual profit is $5.47 and that this amount should serve as the profit element of the constructed value. We, as did Judge Newman, agree with appellant that the doctrine of separability is applicable, but only to the extent that appellant's $5.47 amount may be considered presumptively correct as Waltek's actual profit. But whether or not its $5.47 actual profit amount satisfies the requirements of section 402(d)(2) is the very heart of this controversy, insofar as the profit amount is the sole item in the appraisement that appellant has challenged. To that extent, the doctrine of separability does not create a presumption of correctness that Waltek's actual profit complies with the requirements of

section 402(d)(2). See *United States* v. *Fritzsche Bros., Inc.*, 35 CCPA 60, C.A.D. 371 (1947).

Assuming, *arguendo*, that it could not rely upon the doctrine of separability to meet its burden of proof, appellant asserts that the record demonstrates that it has expended diligent, although unsuccessful, effort to ascertain the profits of the other Hong Kong manufacturers of merchandise of the same general kind. Therefore, appellant contends that the profit actually realized by Waltek should suffice as the profit element of section 402(d)(2).

[4] This court has on occasion permitted the profits actually earned by a manufacturer to be used as the profits required by section 402, when either there are no other manufacturers of merchandise of the same general class or kind or when diligent inquiry has failed to elicit the required information from other manufacturers, if they are in existence. *United States* v. *Jovita Perez*, 36 CCPA 114, C.A.D. 407 (1949). See also *John V. Carr & Son, Inc.* v. *United States*, 52 CCPA 62, C.A.D. 860 (1965) and *United States* v. *Henry Maier*, 21 CCPA 41, T.D. 46378 (1933).

The uncontradicted evidence of record establishes that there were four other Hong Kong manufacturers of merchandise of the same general class or kind, from whom appellant diligently attempted to ascertain the amount or rate of profit attributable to such manufacturing operations. **[5]** We are not unmindful of the fact that appellant attempted to elicit this information from the American parent companies, rather than from their Hong Kong subsidiaries, but we do not find this fact to affect our analysis of whether or not appellant diligently sought the needed profit information.[3] **[6]** Nor do we find any support in the case law that the "diligent effort" rule is not applicable when sales of services, rather than merchandise, are involved.**[7]** The determinative factors are that the companies to whom inquiries were made represented all known Hong Kong manufacturers, and the necessary information, which they declined to provide, was within their possession, as is clearly demonstrated by their replies, supra. Had their replies not indicated that they possessed such information, appellant would have than had to extend the scope of its inquiry to include directly eliciting information from the Hong Kong subsidiaries. Thus, we hold that appellant has satisfied the requirements of the "diligent effort" rule. In so doing, appellant has established that its

[3] We do not find that *N.M. Albert Co., Inc.* v. *United States*, 59 Cust. Ct. 788, R.D. 11417 (1967), relied upon by the trial court, precludes inquiries to a parent corporation from satisfying the "diligent effort" rule. Indeed, the only reference to subsidiaries in that case was to the effect that the foreign manufacturer was a subsidiary of an American company. The manufacturer was found not to have demonstrated due diligence insofar as there was an insufficiency of proof regarding the scope of its inquiry.

profit amount of $5.47 satisfies the requirements of section 402(d)(2) and has overcome the presumption of correctness attaching to the appraisement.

For the foregoing reasons, appraisement of the imported memory planes at the constructed values found by the Customs Court, Third Division, Appellate Term is incorrect, and its judgment is *reversed*.

MILLER, Judge, concurs in the result.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4552)

PARTS MANUFACTURING ASSOCIATES, INC. *v.* UNITED STATES

Furniture—Aircraft seats

Passenger aircraft seats manufactured in England and connected into a track built into the floor of the YS–11, an intermediate transport passenger aircraft, were properly classified under item 727.55 as parts of furniture not specially provided for, and assessed

with duty at the rate of 16 per centum ad valorem. Plaintiff's primary claim for classification under item 694.60 of the tariff schedules as parts of aircraft, dutiable at the rate of 7 per centum ad valorem overruled.

CLASSIFICATION OF IMPORTATIONS AS "PARTS"—DETERMINATION

Whether importations at bar are to be classified as "parts," for customs duty purposes, depends upon the pertinence or applicability of the competing provisions of the tariff schedules, and the meaning of "parts" in customs law. As to the former, the pertinent headnote clearly expresses congressional intent that the term "furniture" includes aircraft furniture. As applied to aircraft, passenger seats comprise a substantial, if not a major, portion of aircraft furniture. The latter requires an examination of General Interpretative Rule 10(ij) which states that a "provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

The applicability of rule 10(ij) "assumes the existence of a 'specific provision' which covers the 'part' of the particular article." See *Vilem B. Haan et al.* v. *United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971). In the case at bar, even if the aircraft seats may otherwise be deemed "parts" of the aircraft, they cannot be classified as "parts" since they are included in the "more specific" provision for furniture.

LEGISLATIVE INTENT—STATUTORY CONSTRUCTION

There is no doubt as to the legislative intent that aircraft seats are aircraft furniture included in the tariff item covering furniture. A cardinal principle of statutory construction requires courts to give effect to the intent of the legislature in an area reposing within its competence.

Court Nos. 70/53017, 70/53022, and 70/53023

Port of Charleston, S.C.

[Judgment for defendant.]

(Decided July 17, 1974)

Byrum, Byrum & Burris (*Robert N. Burris* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain aircraft passenger seats. The seats were manufactured in England and entered

at the port of Charleston, South Carolina in 1969. At the trial, on plaintiff's motion, and without objection, Court Nos. 70/53017, 70/53022, and 70/53023, were consolidated.

The seats were classified by the customs officials under item 727.55 of the Tariff Schedules of the United States as "[f]urniture, and parts thereof, not specially provided for: * * * [o]ther." Duty was consequently assessed at the rate of 16 per centum ad valorem. Plaintiff contests that classification, and urges that the proper classification is under one of two suggested tariff items.

Plaintiff's primary claim is that the aircraft seats are properly classifiable under item 694.60 of the tariff schedules which covers other parts of aircraft and spacecraft, with a duty of 7 per centum ad valorem. Alternatively, plaintiff urges that the aircraft seats are properly dutiable under item 727.02 of the tariff schedules, with duty at the rate of 9 per centum ad valorem. Item 727.02 covers "dentists', barbers' and similar chairs," and, in essence, plaintiff maintains that the aircraft chairs are *ejusdem generis* with those enumerated in the alternatively claimed tariff item.

The key to the proper classification of any imported article is always to be found in the various competing provisions of the tariff schedules. Many anomalies of classification of merchandise tend to disappear when the competing items are compared, and the underlying congressional intent is given effect.

In the case at bar, aircraft seats were classified as furniture, whereas the importer maintains that they should have been classified as other parts of aircraft, or as chairs similar to dentists' or barbers' chairs.

The following are the pertinent statutory provisions:

> "General Interpretative Rules. For the purposes of these schedules—
>
> * * * * * * *
>
> [10](ij) a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

Classified under:

> Schedule 7, part 4, subpart A:
>
> "Subpart A headnote:
>
> 1. For the purposes of this subpart, the term 'furniture' includes movable articles of utility, designed to be placed on the floor or ground, and used to equip dwellings, offices, restaurants, libraries, schools, churches, hospitals, or other establish-

ments, aircraft, vessels, vehicles, or other means of transport, gardens, patios, parks, or similar outdoor places, even though such articles are designed to be screwed, bolted, or otherwise fixed in place on the floor or ground; and kitchen cabinets and similar cupboards, seats and beds, and sectional bookcases and similar sectional furniture, even though designed to be fixed to the wall or to stand one on the other; but the term does not include—[Exceptions not applicable.]"

* * * * * * *

"Furniture, and parts thereof, not specially provided for:

* * * * * * *

727.55 Other ---------- 16% ad val."

Claimed under:

Schedule 6, part 6, subpart C:

"Aircraft and spacecraft, and parts thereof:

* * * * * * *

694.60 Other parts---------- 7% ad val."

Claimed under (alternatively):

Schedule 7, part 4, subpart A:

"Furniture designed for hospital, medical, surgical, veterinary, or dental use; dentists', barbers' and similar chairs with mechanical elevating, rotating, or reclining movements; and parts of the foregoing:

727.02 Dentists', barbers' and similar chairs with mechanical elevating, rotating, or reclining movements, and parts thereof---------- 9% ad val."

There is no factual dispute. The importations consist of aircraft passenger seats ordered for installation in the YS–11 aircraft. The seats were specifically designed for the YS–11 which is an intermediate transport passenger aircraft. The seats were especially constructed to meet certain Federal Aviation Administration requirements. They contain armrests, removable cushions for life flotation equipment, ash trays, holes for receiving meal trays, seat belts, and meal trays on their backs. Each of the seats were connected into a track built into the floor of the aircraft.

Plaintiff, in its brief, asserts that it submitted "uncontroverted evidence that said seats could only be used for the YS–11 aircraft and were an integral part thereof, and further that the YS–11 aircraft as presently configured and certified by the [Federal Aviation Administration] could only be used as a passenger aircraft and that these seats were an essential part and that the YS–11 aircraft was incapable of properly functioning without them." (Plaintiff's brief, p. 2)

Plaintiff cites certain cases in support of its primary contention that the seats should have been classified, and held dutiable, as parts of aircraft. There exists a great wealth of judicial literature on the subject of what constitutes "parts" for customs duty purposes. "Parts" is a word of art in customs law. Indeed, its development and evolution is an interesting one. No purpose, however, would be served to review the many cases that have given the word its present meaning. See discussion of leading cases in *Vilem B. Haan et al.* v. *United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971).

In support of its contention that the seats are to be classified as parts of aircraft, in addition to the *Vilem B. Haan* case plaintiff relies on *Herbert G. Schwarz, dba Ski Imports* v. *United States*, 284 F. Supp. 792, 60 Cust. Ct. 522, C.D 3447 (1968), *aff'd*, 417 F.2d 1391, 57 CCPA 19, C.A.D. 971 (1969); *Sankyodai Corp.* v. *United States*, 62 Cust. Ct. 630, C.D. 3837 (1969) and *Engis Equipment Company* v. *United States*, 284 F. Supp. 798, 60 Cust. Ct. 436, C.D. 3413 (1968).

In all of the cited cases the law of "parts" was discussed to the extent therein deemed necessary. In the *Vilem B. Haan* case, headrests for automobile seats had been classified under a tariff provision that covered pillows, cushions, mattresses and similar furnishings. Since the headrests had been designed, and were used extensively as automobile seat headrests, for the comfort and safety of front seat passengers in automobiles, the court held that they should properly have been classified under the provision covering "[f]urniture designed for motor-vehicle use, and parts thereof."

In the *Herbert G. Schwarz* case the Court of Customs and Patent Appeals affirmed this court in sustaining the classification of certain automobile "luggage racks" and "ski carriers" under a provision that covered articles of iron or steel, not coated or plated with precious metal. The courts thereby overruled the importer's claim that the merchandise should have been classified as fittings or mountings designed for motor vehicles.

In the *Sankyodai Corp.* case wooden seats for use in certain plastic boats were classified as parts of yachts or pleasure boats. The importer conceded that they were dedicated for use as parts of such yachts or pleasure boats, but contended that they were more specifically provided for under the tariff provisions that covered furniture of wood.

In sustaining the classification of that particular importation the court stated:

> "The most that the evidence at bar establishes insofar as the seat is concerned is that the imported merchandise constitutes part of an article which when complete becomes a boat seat. And such proof is of no value here in any case absent a claim for classification under a provision for 'parts'. It, therefore, follows that *plaintiff has wholly failed to present any evidence which defeats the classification of the instant merchandise as parts of pleasure boats.* Consequently, the protests are overruled." (Emphasis added.) 62 Cust. Ct. at 634.

In the *Engis Equipment Company* case plaintiff maintained that certain projectors, scales and zero setting attachments were parts of jig-boring machine tools. Since plaintiff "failed to show that the imports involved were manufactured and dedicated solely for use on jig-boring machine tools and had no other useful purpose," the protest was overruled.

In the present case, in support of its primary claim, plaintiff has quoted passages from the opinions of the cited cases for the purpose of persuading the court that the aircraft seats are *parts* of the aircraft. Whether they are to be classified as *parts*, for customs duty purposes, however, depends upon the pertinence or applicability of the competing provisions of the tariff schedules, and the meaning of "parts" in customs law.

The aircraft seats have been classified as "furniture," and there is a statutory presumption that they have been correctly classified. 28 U.S.C. § 2635(a) (1970). See also *Sanji Kobata et al.* v. *United States*, 326 F. Supp. 1397, 66 Cust. Ct. 341 (1971); *Nishimoto Trading Company, Ltd., et al.* v. *United States*, 72 Cust. Ct. —, C.D. 4504 (1974), appeal pending.

Headnote 1, subpart A, part 4, schedule 7 sheds considerable light upon the congressional intent as to what articles constitute furniture. In pertinent part, that headnote states that:

> "* * * the term '*furniture*' includes movable articles of utility, designed to be placed on the floor or ground, and used to equip * * * aircraft * * * even though such articles are designed to be screwed, bolted, or otherwise fixed in place on the floor * * *."

The headnote makes it abundantly clear that the term "furniture" includes aircraft furniture. Furthermore, it is obvious that, as applied to aircraft, passenger seats comprise a substantial, if not a major, portion of aircraft furniture. Consequently, it is important to determine the applicability of General Interpretative Rule 10(ij) to the case at bar.

General Interpretative Rule 10(ij) states that a "provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part." Clearly, therefore, even it the aircraft seats may otherwise be deemed to be "parts" of the aircraft, they cannot be classified as "parts" if they are included in the more "specific provision" for "furniture."

The meaning and applicability of rule 10(ij) has been treated in a large number of cases. See *United States* v. *General Electric Co.*, 58 CCPA 152, C.A.D. 1021 (1971). In many of the cases, the question was whether the importation was, in fact, included in the "specific provision." As stated in the *Vilem B. Haan* case, the applicability of rule 10(ij) "assumes the existence of a 'specific provision' which covers the 'part' of the particular article." 67 Cust. Ct. at 111. For example, in the *Vilem B. Haan* case, the court held that automobile headrests were not specifically provided for in the provision under which they were classified. The specific provision there covered "pillows [or] cushions," not "automobile headrests." Hence, since they were not provided for in "a specific provision for such part," they were deemed properly classifiable as *parts* of furniture designed for motor vehicle use.

As illustrated in the *Vilem B. Haan*, case, whether the particular article is specifically provided for, i.e., whether there is a "specific provision for such part," is not always free from doubt. In all cases the court must determine if the "part" is embraced in the *eo nomine* or "specific provision." If it is, then, by virtue of rule 10(ij), such a specific provision prevails over a "parts" provision.

Recently, for example, in *Oxford International Corp.* v. *United States*, 72 Cust. Ct. —, C.D. 4540 (1974), the court had to determine whether a bicycle mirror was specifically provided for in a tariff provision that covered mirrors. The tariff provision covered mirrors, with or without frames or cases, not over one square foot in reflecting area. The importation consisted of a mirror head, which was framed, together with other parts that comprised a "mounting bracket" to permit attachment of the bicycle mirror to a bicycle handle bar. It was admitted that the bicycle mirror, consisting of the mirror portion and the mounting portion, comprised a commercial unit dutiable as an entirety.

The court, after examining the importation, determined that the challenged specific provision for mirrors did not embrace the entirety known and sold as a bicycle mirror which contains a quantity of parts in addition to the mirror itself. Hence, the court held that the bicycle mirror was, for customs duty purposes, classifiable and dutiable, as other parts of bicycles, as claimed.

In the present case, a reading of the furniture provision, together with the preceding headnote, leaves no doubt that the aircraft seats were intended to be included in the furniture provision. To classify the aircraft seats as parts of aircraft, as claimed, would be tantamount to denying judicial effect to that portion of the headnote that pertains to aircraft furniture.

The headnote clearly expresses the legislative intent that aircraft furniture be included in the furniture provision. No citation of authority is required for the cardinal principle of statutory construction that requires that the courts give effect to the intent of the legislature in an area reposing within its competence.

Since the court finds that the aircraft seats are aircraft furniture, included in the tariff item covering "furniture," it follows that the classification of the customs officials was correct.

Plaintiff cites a number of cases for the proposition that if the classification of an article is in doubt, the court will resolve that doubt in favor of the importer since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language. *American Net & Twine Co.* v. *Worthington*, 141 U.S. 468 (1891); *Hartranft* v. *Wiegmann*, 121 U.S. 609 (1887). These cases and others, however, are not controlling where, as in the case at bar, there is no doubt as to the legislative intent of Congress. See *United States* v. *St. Joseph's Church*, 48 CCPA 42, 45, C.A.D. 761 (1960).

In view of the foregoing, it is the determination of the court that plaintiff has not succeeded in proving that the aircraft seats were erroneously classified, and that they should have been classified as parts of aircraft, as claimed.

It is the determination of the court that the aircraft seats were correctly classified under item 727.55 of the tariff schedules, as other furniture. Consequently, it is not necessary to pass upon plaintiff's alternative claim that they are similar to dentists' and barbers' chairs under item 727.02 of the tariff schedules. No proof was submitted at the trial which would permit a finding that the aircraft sets are "similar" to dentists' or barbers' chairs. It may, nevertheless, be stated that nothing before the court would lend support to the assertion that Congress considered aircraft seats to be *ejusdem generis* with the special purpose chairs specifically named in item 727.02. See provision 94.02 and *Notes* thereto in *Explanatory Notes to the Brussels Nomenclature* (1967).

The classification of the customs officials, which classified the imported aircraft passenger seats under item 727.55 of the tariff schedules, is sustained. Judgment will issue accordingly.

(C.D. 4553)

PITTSBURGH PLATE GLASS COMPANY *v.* UNITED STATES

Ceramic products

REFRACTORY BRICKS—TANK BLOCKS

"Tank blocks" (flux blocks) imported in various sizes and shapes, mostly rectangular (1 by 2 by 3 feet) used in constructing a refractory lining in the lower portion of the tin bath of the float-glass furnace at plaintiff's glassmaking facility, which lining acts as a thermal insulation to resist the action of molten tin employed in the float-glass production process, are "refractory bricks" within the common meaning of that term; and thus are properly dutiable under item 531.27, TSUS, as claimed by plaintiff, rather than under item 531.39 as refractory articles not specially provided for, as assessed by the Government.

REFRACTORY BRICKS—COMMON MEANING

"Refractory bricks" (fire brick) are heat-resistant articles used in the construction of linings for furnaces, ovens, and similar installations. *John C. Rogers & Co., Inc., a/c Hoeganaes Sponge Iron Corp.* v. *United States*, 64 Cust. Ct. 12, C.D. 3952 (1970), *aff'd* 58 CCPA 104, C.A.D. 1012, 436 F.2d 1034 (1971), cited.

REFRACTORY BRICKS—EO NOMINE DESIGNATION

Item 531.27, TSUS is an *eo nomine* designation without limitation, and therefore includes all forms of refractory bricks, absent any showing of contrary legislative intent, judicial decision, or administrative practice. Cf. *Nomura (America) Corp.* v. *United States*, 58 CCPA 82, 85, C.A.D. 1007, 435 F.2d 1319 (1971). Therefore, the provision in item 531.27, TSUS is not limited in its scope to standard straight refractory bricks.

REFRACTORY BRICKS—CRITERIA—SIZE AND SHAPE

Size and shape are not essential criteria for fire brick (refractory bricks). Thus, "tank blocks" (flux blocks) of different sizes and shapes, mostly rectangular, measuring 1 by 2 by 3 feet and weighing 800 to 900 pounds each, are not precluded from classification as "refractory bricks" under item 531.27, TSUS because of their size or shape. *Rogers*, *supra*, at page 18, cited.

REFRACTORY BRICKS—KNOWN AS "BLOCKS"

The fact that the imports were generally bought, sold and known in the trade as "blocks" (viz., tank blocks or flux blocks), rather than as "bricks" does not preclude the classification of the imports as "refractory bricks" under item 531.27, TSUS. *Rogers*, *supra*, at page 18, cited.

Court Nos. 66/53432–B and 66/72134

Port of New York

[Judgment for plaintiff.]

(Decided July 18, 1974)

Barnes, Richardson & Colburn (*Rufus E. Jarman, Jr.* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

NEWMAN, Judge: The issue in these two consolidated protests concerns the proper rate of duty on merchandise invoiced as "tank blocks",[1] produced in West Germany and imported by plaintiff at the port of New York in 1965. The "tank blocks" were classified by the Government under the provision in item 531.39 of the Tariff Schedules of the United States (TSUS) for "Other" shaped refractory and heat-insulating articles not specially provided for, and assessed with duty at the rate of 15 per centum ad valorem. Plaintiff claims that the articles are properly dutiable under the provision in item 531.27, TSUS for refractory and heat-insulating *bricks* at the rate of 3 per centum ad valorem.

STATUTE INVOLVED

Schedule 5, part 2, subpart A, TSUS:

	Refractory and heat-insulating bricks of sizes and shapes:	
	* * * * * * *	
531.27	Other bricks	3% ad val.
	Shaped refractory and heat-insulating articles not specially provided for * * *:	
	* * * * * * *	
531.39	Other	15% ad val.

THE ISSUE

Since it is undisputed that the imports are refractory, the sole issue presented for determination is whether the imports are refractory "bricks" within the common meaning of that term.

I have concluded that the protests should be sustained.

[1] It may be noted that the merchandise was described by the customs examiner as "bricks" on the "Notice of Action Increase in Duties" (customs form 5555).

The Record

The record comprises the testimony of four witnesses on behalf of plaintiff and one witness on behalf of defendant. Additionally, plaintiff submitted eight exhibits, including a stipulation of fact and the official papers; and defendant submitted six exhibits.

The stipulation reads as follows:

> The articles in question were manufactured at the Niederlahnstein Works of Didier Werke A.G. They were pneumatically rammed of clays and fired to a temperature of 1,100°C in an intermittent kiln fueled by gas produced from lignite coal. The fired block were surface dressed with silicon carbide wheels and the bolt holes were drilled.

Approximate chemical analysis and selected physical properties of the imported articles are as follows:

Chemical Analysis

SiO_2	70.7%
Al_2O_3	22.8%
Fe_2O_3	0.59%
TiO_2	1.9%
CaO	0.2%
MgO	0.3%
K_2O	2.7%
Na_2O	0.5%
V_2O_5	0.01%

Physical Properties

Refractoriness (Seger Cone)	30½ (1,689°C)
% Apparent Porosity	20.2
Bulk Density	124#/ft.³
Thermal Conductivity	5.0 at 200°C 7.7 at 800°C

The imported articles were used to line the lower portion of the float chamber in the float glass production process.

The float glass production process involves the mixing of batch ingredients, introduction to a melting furnace, and discharge of the finished molten glass to a float bath chamber. Within this chamber the glass spreads onto the surface of molten tin and is continuously drawn through a diminishing temperature environment in such a way that the glass hardens to its final form and is conveyed out of the float chamber into an annealing oven and thence to final processing and packing. The articles in question function to contain the molten tin, provide thermal insulation, and minimize contact between the tin and the outer casing.

The imported articles in question are provided with counterbored holes to permit them to be fixed in place by bolts welded to the steel casing. This also prevents their flotation by the hydro-

static head of molten tin. The counterbore is filled with a ceramic mortar after the bolts are secured. This procedure prevents contact between the bolt heads and the molten tin. Each block is set with a precalculated expansion gap between adjacent block elements so that when heated the exposed surface of the refractory is as monolithic as possible.

The testimony of record further establishes:

The imported articles, referred to in the trade as "tank blocks" or "flux blocks," were imported for use in constructing a refractory lining in the tin bath of the float-glass furnace at plaintiff's glass-making facility at Crystal City, Missouri. The blocks were of various shapes and sizes, the majority of blocks being rectangular and measuring approximately 1 by 2 by 3 feet, and weighing between 800 and 900 pounds.

After the tank blocks arrived at plaintiff's plant at Crystal City, they were placed individually across the bottom of a steel containing pan, in accordance with detailed drawings of the refractory lining, and bolted in place. The relatively large sizes of the tank blocks are dictated by this practice of bolting the individual blocks to a substructure, and by the fact that the large units minimize the number of joints which are more susceptible to the corrosive action of the molten materials than are the blocks.

Contentions of the Parties

While admitting that the tank blocks are larger than ordinary construction or refractory bricks, plaintiff contends that use, not size, is the determinant criterion of what constitutes a refractory brick for tariff purposes. Thus, plaintiff argues that the use of the tank blocks in constructing a refractory lining for the tin bath of a float-glass furnace constitutes the blocks as "refractory bricks" within the common meaning of the term.

Defendant, on the other hand, does not dispute that the merchandise is refractory, but insists that the tank blocks are not "bricks" within the common meaning of the term.

Common Meaning of "Refractory Brick"

It is, of course, fundamental in determining the common meaning of a term or word used in a tariff provision that court decisions, dictionary definitions and other lexicographical authorities may be considered. Thus, in *John C. Rogers & Co., Inc., a/c Hoeganaes Sponge Iron Corp.* v. *United States*, 64 Cust. Ct. 12, C.D. 3952 (1970), *aff'd* 58 CCPA 104, C.A.D. 1012, 436 F.2d 1034 (1971), the issue presented was whether certain tubes and rings fell within the common meaning of the term "fire brick" in paragraph 201(a) of the Tariff Act of

1930.[2] After reviewing various dictionaries, encyclopedias, and administrative publications, Judge Landis (writing for the Third Division) stated the criteria for classifying "fire brick" as follows (64 Cust. Ct. at page 16):

> * * * We find that all sources [for searching out the meaning of a tariff term], some of which plaintiff cites, conjoin in the common understanding that *the essential criteria of a "fire brick" are that it is a heat resistant article used in the construction of linings for furnaces, ovens, and similar installations.* [Emphasis added]

In *Rogers*, the trial court held that the tubes and rings were not "fire brick", and observed (64 Cust. Ct. at page 19):

> It remains only to decide whether these imported tubes and rings "fairly and clearly" meet the essential criteria for "fire brick" which, as we have found, in 1930 included only articles made of heat resistant material, used in the construction of furnaces, ovens, and the like. We conclude that they do not.
>
> These imported tubes and rings, in the condition as imported, meet rather exacting specifications. * * * All that needs be done is to assemble the tubes and rings into a chamber which may, or may not be, akin to a furnace, oven, or exotic sagger. Assembling the tubes and rings into a chamber is not "fairly and clearly" like constructing a furnace or oven. Fire brick used in the construction of a furnace or oven also connotes a masonry unit of a sort. These tubes and rings are not used as masonry units. They are prefabricated units designed to fit together in an orderly manner and more than mere tire brick which, along with some special, but still standard shapes, are used as linings for furnaces and ovens. E.g., *United States* v. *The A. W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794 (1962). There is no need to further expound on the distinctions. They are carefully lexiconed. Nowhere have we found that the word "assemble" is synonymous with the word "construction" or "construct". We are satisfied that these distinctions are valid, and that they are fatal to the classification of these imported tubes and rings as "fire brick". * * *

By contrast to the tubes and rings in *Rogers*, the tank blocks in the present case are not prefabricated components designed for mere assembly into a chamber, but rather are large masonry units used to construct the refractory lining for the tin bath of a float-glass furnace. In this respect, the tank blocks differ substantially from the merchandise in *Rogers*.

According to defendant's expert witness, who was an officer of a large United States manufacturer of refractory articles, "tank blocks" are referred to in the trade also as "flux blocks", the terms being synonymous (R.182). Significantly, *Encyclopaedia Britannica* (1970),

[2] It is undisputed that the terms "fire brick" and "refractory bricks" are synonymous. *Encyclopaedia Britannica* (1960), vol. 9, page 294. See also *Summary of Tariff Information*, 1920, page 135.

vol. 9, indicates that "flux blocks" used by the glass industry [3] are refractory bricks. Thus, at pages 294–295 it is stated:

> FIREBRICK. Another descriptive term for this product is refractory brick, which includes a variety of shapes made from nonmetalic minerals and intended for service at high temperatures. The largest consumers of firebrick are the metal and glass industries.
>
> * * * * * * *
>
> Firebrick is vital to the production of glass. Glass furnaces or tanks, as they are called, are elaborate refractory structures in which high rates of melting can be maintained. Glass may be considered as a special and extremely corrosive type of slag. Several materials used in its manufacture, such as soda ash, sodium sulfate, lime and borax, react vigorously with many refractories at high temperatures. For this reason highly siliceous, dense, *fireclay bricks, known as flux blocks*, are much used in the portion of the tank that is in contact with molten glass. * * * [Emphasis added.]

Flux blocks, whether used in the tin bath or in the melting furnace, serve the same general function, viz: provide a heat-resistant lining. In this connection, plaintiff's chief power engineer, who had the responsibility for the design and construction of glass melting furnaces and the selection of refractory bricks and other refractory materials for use in plaintiff's glass plants, testified (R. 32–33):

> Q. Would you describe exactly what the function of these imported articles installed in the flow bath is?—A. Their function primarily is to provide a thermal barrier between the molten tin contained within the flow bath and the metal casing. In addition, they also provide a resistance against corrosion and some structural capability.
>
> Q. How would you describe the function of similar articles used in the melting furnace portion?—A. Similar articles in the melting furnace portion would serve, in general, the same purpose except that they would not be resisting the action of molten tin but rather the action of molten glass.
>
> Q. Do they have a heat saving or insulating function?—A. Yes.
>
> Q. In both uses?—A. Yes.

Moreover, in *Rogers*, the trial court noted that fire brick is "used in the construction of linings for furnaces, ovens, *and similar installations*." (Emphasis added.) Plainly, the tin bath of the float-glass furnace is a "similar installation" within the meaning of the above-quoted statement. Furthermore, *Encyclopedia Americana* (1953), vol. 11, page 234, points out: "* * * They [fire brick] are used for

[3] Interestingly, in Walsh Refractories Corporation's sales catalog (defendant's exhibit F), page 134, flux blocks for the glass industry are depicted. On page 132 of the catalog, flux blocks listed as "CAST FLUX No. 71" perform the same function as the imports (R. 169–170).

lining furnaces, *and for all kinds of brick-work exposed to intense heat which would melt common bricks.*" (Emphasis added.)

Consequently, I find that whether flux blocks are used in a glass-melting furnace to act as a thermal barrier to molten glass or, as in this case, are used in the tin bath to act as a thermal barrier to resist the action of molten tin, such blocks fall within the common meaning of "refractory brick". In reaching the foregoing conclusion, I have considered defendant's evidence that flux blocks differ from standard straight refractory bricks (as defendant's exhibit B) in such factors as: size, costs, manner of pricing, method of manufacturing, time required to manufacture, finishing procedures after firing, quality control and method of installation. However, I do not deem those factors to be controlling in light of the common meaning of "fire brick" (refractory brick) as enunciated in *Rogers*, which focuses upon the *use* of the heat-resistant article.

Further, defendant's efforts to limit item 531.27, TSUS to "standard" refractory brick such as exhibit B must fail, since item 531.27 is an *eo nomine* designation without limitation, and therefore includes all forms of refractory brick, absent any showing of contrary legislative intent, judicial decision, or administrative practice. Cf. *Nomura (America) Corp.* v. *United States*, 58 CCPA 82, 85, C.A.D. 1007, 435 F. 2d 1319 (1971). The Walsh Refractories Corporation's sales catalog (exhibit F) demonstrates that there are many possible variations in the size and shape of refractory brick. For example, included are such "fire brick shapes" as: standard shiplap tile" from size 2 by 12 by 12 inches to 4 by 12 by 24 inches (page 48); "standard burner blocks" from size 9 by 7½ by 9 inches to 15 by 15 by 9 inches (page 50); and "kiln car tile", concerning which the catalog states: "Custom designs manufactured to meet your particular requirements" (page 55). Obviously, then, "refractory bricks" are not limited to those represented by defendant's exhibit B.

Defendant's contention that refractory bricks are a "handy-size unit" (capable of being held in the hand), predicated upon the testimony of its expert witness (R. 171), is without merit. In *Rogers*, the trial court specifically ruled out size and shape as essential criteria for "fire brick", stating (64 Cust. Ct. at page 18):

> We note that, whenever size and shape are mentioned, it is the consensus of the reference authorities, *supra*, that "fire brick" comes in a variety of sizes and shapes. We have, therefore, eliminated size and shape as essential criteria for "fire brick". * * *

Furthermore, the larger shiplap tile and burned blocks listed in the Walsh sales catalog under "fire brick shapes" (pages 48 and 50) could hardly be regarded as "handy-size".

Defendant also makes much of the fact (which is undisputed) that the imports were generally bought, sold and known in the trade as "blocks" (viz., tank blocks or flux blocs), rather than as "bricks". However, this fact does not preclude the classification of the imports as refractory bricks. Indeed, the trial court in *Rogers* (64 Cust. Ct. at page 18) pointed up:

> The judicial principal that it is not how an article is called but how it is used that determines whether it is brick, [cases cited] is equally valid as to "fire brick" as it is to general construction brick.

It may be emphasized, also, that there are "fire brick shapes" depicted in the Walsh sales catalog called "blocks" and "tile" (pages 48, 50, and 55).

Conclusion

In summary, the stipulated facts and the weight of the testimony of record establish that the merchandise in this case falls within the common meaning of "refractory bricks". Accordingly, I hold that the imported merchandise is properly dutiable at the rate of 3 per centum ad valorem under the provision in item 531.27, TSUS for "Refractory and heat-insulating bricks in all sizes and shapes: * * * Other bricks", as claimed by plaintiff.[4]

Judgment will be entered accordingly.

[4] There is no dispute between the parties that the merchandise is neither chrome bricks, dutiable under item 531.21, or magnesite bricks, dutiable under item 531.24.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *July 22, 1974.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customers and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/544	Re, J. July 16, 1974	C. Itoh & Co. (America), Inc.	66/6943, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statment of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/545	Re, J. July 16, 1974	C. Itoh & Co. (America), Inc.	66/54845, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/546	Re, J. July 16, 1974	Marubeni Iida America, Inc., et al.	68/38741, etc.	Item 684.70 15% and 13%	Item 685.22 12.5% Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/547	Re, J. July 16, 1974	Sekiya International N.Y., Inc.	67/7497	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/548	Re, J. July 16, 1974	Venetianaire Corp. of America et al.	68/13072, etc.	Item 772.15 17%, 15% or 13.5%	Item 772.35 12.5%, 11% or 10%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress and pillow covers and protectors
P74/549	Re, J. July 16, 1974	Venetianaire Corp. of America	70/25652, etc.	Item 772.15 15%, 13.5% or 11.5%	Item 772.35 11%, 10% or 8.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Plastic mattress and pillow covers and protectors
P74/550	Boe, C. J. July 17, 1974	S. S. Kresge Co.	71-6-00232	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/551	Newman, J. July 17, 1974	Amerex Trading Corp.	66/76077, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/552	Re, J. July 17, 1974	Delaware Mercantile Co., Inc.	67/63264, etc.	Item 732.36 30% or 27%	Item 642.20 19% or 17%	Agreed statement of facts	New York Cables in c.v. of wire fitted with fittings

P74/553	Re, J. July 17, 1974	Gosho Trading Co., Inc.	66/75060, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/554	Re, J. July 17, 1974	North American Foreign Trading Corp.	66/49559	Item 684.70 13%	Item 685.25 11%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/555	Boe, C.J. July 18, 1974	F. J. Strauss, Inc.	63/18021, etc.	Par. 371 30%	Par. 353 13 ¾%	S. Hiller & Co. et al. v. U.S. (C.D. 3082)	New York Bicycle horns
P74/556	Ford, J. July 18, 1974	B.P.M. International, Ltd., et al.	66/41348, etc.	Item 684.70 15% (items marked "A") Item 706.08 20% (items marked "B")	Item 685.22 12.5% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "B")	New York Earphones (items marked "A") Cases for transistor radios (entireties with radios) (items marked "B")
P74/557	Ford, J. July 18, 1974	Mitsui & Co., Ltd.	66/60705, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/558	Ford, J. July 18, 1974	Nichimen Co., Inc., et al.	69/36266(A), etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corps. et al. v. U.S. (C.D. 4405)	New York Earphones imported, and chiefly used, with radios
P74/559	Maletz, J. July 18, 1974	Exhibit Sales, Inc., et al.	69/22024, etc.	Item 683.70 35%	Item 737.90 31%, 28% or 24%	Amico, Inc., etc. v. U.S. (C.D. 4494)	Philadelphia Toy flashlights

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/560	Newman, J. July 18, 1974	ITT Export Corp. et al.	66/63017, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/561	Newman, J. July 18, 1974	Mitsui & Co., Ltd.	65/25252, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	Los Angeles Earphones (not headphones) of a type chiefly used with radios
P74/562	Newman, J. July 18, 1974	North American Foreign Trading Corp.	67/44567, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/563	Newman, J. July 18, 1974	Precise Imports Corporation et al.	67/63488, etc.	Item 207.00 16¾% or 15%	Item 727.35 10.5% or 9%	The American Import Co. et al. v. U.S. (C.D. 3807)	New York Gun racks
P74/564	Newman, J. July 18, 1974	Schenley Affiliated Brands Corp., T/A Schenley Import Co.	70/61340	Item 774.60 13.5%	Merchandise reported "manifested, not found," was not imported; duty should not have been assessed on said merchandise	Agreed statement of facts	New York Shortage; 2 cases of pocket calendars
P74/565	Ford, J. July 19, 1974	Aimcee Wholesale Corp. & Associated Merchandising Corp. et al.	68/62795, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/566	Ford, J. July 19, 1974	C.M. Import & Export Corp.	69/37826, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	Chicago Earphones imported with radios

P74/567	Ford, J. July 19, 1974	B.P.M. International, Ltd.	66/17128, etc.	Item 684.70 15%	Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones which are other parts of radio reception apparatus (items marked "A") Earphones (items marked "B")
P74/568	Ford, J. July 19, 1974	Nichimen Co., Inc., et al.	68/33404, etc.	Item 684.70 13%	Item 685.25 11%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/569	Ford, J. July 19, 1974	Sony Corporation of America et al.	66/80723, etc.	Item 684.70 15% (items marked "A") Item 706.08, 706.60 or 791.65 20% (items marked "C")	Item 685.22 12.5% (items marked "A" and "C")	General Electire Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	New York Earphones (items marked "A") Cases for transistor radios (entireties with radios) (items marked "C")
P74/570	Ford, J. July 19, 1974	Sony Corp. of America	69/33063, etc.	Item 684.70 15% or 13%	Item 685.25 11% Item 685.22 12.5%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P74/571	Richardson, J. July 19, 1974	Ross Products, Inc.	67/84056	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	Baltimore Bird cages with flowers and lights
P74/572	Newman, J. July 19, 1974	John Dritz & Sons, Inc.	67/41613	Item 389.70 20%	Item 256.90 17.5%	Judgment on the pleadings John Dritz & Sons, Inc. v. U.S. (C.D. 3231)	San Francisco Paper sewing baskets
P74/573	Re, J. July 19, 1974	Gambles Import Corp.	71-11-01771	Item 737.30 12.5%	Item 685.23 11%	Judgment on the pleadings U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	Los Angeles Solid-state tubeless radio receivers ("shaggy dog with radio")

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/269	Re, J. July 16, 1974	The Beton Co. et al.	287147–A, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R74/270	Re, J. July 16, 1974	The East Asiatic Co.	R59/27	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R74/271	Re, J. July 16, 1971	United States Plywood Corp.	R59/2858, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood

Decisions of the United States Customs Court

Abstracts

Abstracted Valuation Decision on Remand from Protest Proceedings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V74/1	Landis, J. July 16, 1974	F. Chu & Co.	62/18342 (C.D. 4018)	Export value	Unit prices set forth in schedule A attached to decision and judgment for the repacked merchandise	Agreed statement of facts	San Francisco Silk wearing apparel entered at New York (WH entry No. 31840) and transferred to San Francisco (rewarehouse entry No. 3047)

ERRATA

In Vol. 8, No. 25, weekly Customs Bulletin, June 19, 1974 issue (C.D. 4543):

page 15, next to last line change "type player" to "tape player";

page 20, footnote 2, 3rd line, change "RH35" to "R835";

page 21, under Conclusions of Law, par. No. 2, 10th line, change "H835" to "R835";

page 22, 1st line, delete "do not have any features or capabilities which are" and insert "are properly dutiable under the *eo nomine* provision."

In Vol. 8, No. 28, weekly Customs Bulletin, July 10, 1974 issue (C.D. 4548), page 14, 10th line, the quoted word "CHANGE" should be "CHARGE".

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *July 31, 1974.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337-37]

GOLF GLOVES

Notice of resumption of hearing

Notice is hereby given that the United States Tariff Commission will resume its public hearing in connection with investigation No. 337-37, Golf Gloves, on August 23, 1974, at 10:00 a.m. E.D.T. in the Hearing Room of the U.S. Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. Requests for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, not later than noon, August 19, 1974.

Notice of the institution of the investigation and the ordering of a public hearing for July 1, 1974, was published in the *Federal Register* on May 29, 1974 (39 F.R. 18724).

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued July 24, 1974.

[337-L-66]

CHAIN DOOR LOCKS

Notice of amended complaint received

The United States Tariff Commission hereby gives notice of the receipt on June 17, 1974, of an amended complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) filed by Ideal Security

Hardware Corporation of Saint Paul, Minnesota, alleging unfair methods of competition and unfair acts in the importation and sale of certain chain door locks said to be embraced within the claims of U.S. Patents No. 3,161,035; 3,275,364; and 3,395,556. The amended complaint adds U.S. Patent No. 3,161,035. All of the patents are owned by complainant.

Notice of receipt of the original complaint was published on July 31, 1973, in the *Federal Register* (38 F.R. 20381).

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued July 23, 1974.

[AA1921-141]

WRENCHES, PLIERS, SCREWDRIVERS, AND METAL-CUTTING SNIPS AND SHEARS FROM JAPAN

Notice of investigation and hearing

Having received advice from the Treasury Department on July 19, 1974, that wrenches, pliers, screwdrivers, and metal-cutting snips and shears from Japan are being, or are likely to be, sold at less than fair value, the United States Tariff Commission on July 24, 1974, instituted investigation No. AA1921-141 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10:00 a.m., EDT, on Tuesday, August 20, 1974. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon Friday, August 16, 1974.

By order of the Commission:

KENNETH R. MASON,
Secretary

Issued July 24, 1974

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